



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 13 2007

Joseph Kahn, Director
Division of Air Resource Management
Florida Department of
Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Kahn:

This correspondence is being sent to provide you with an official final copy of the Environmental Protection Agency (EPA) Region 4 report, which was completed as a result of the EPA Title V program evaluation conducted on July 11th – 12th (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Florida Department of Environmental Protection (FDEP) to carry out the duties and responsibilities required to effectively run the Title V program, as well as find out how EPA can best assist the FDEP in meeting these commitments.

I would like to thank you and your staff for your cooperation throughout the evaluation. Your staff responded to the questionnaires and provided all requested material in a timely and professional manner. In addition, with the exception of the fee issues which were addressed in a separate letter, dated September 28, 2007 to Florida Secretary Michael W. Sole, EPA believes that FDEP is operating the title V program at a high level of proficiency and looks forward to working with the FDEP to resolve these areas requiring correction. I commend you on the performance of your title V program.

If you have any questions regarding the report, please do not hesitate to contact me or have your staff contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly H. Banister", with a stylized flourish at the end.

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosure

Florida Department of Environmental Protection

Title V Program Review

Introduction

Based on the information gathered from the initial title V program evaluations and the implementation of new title V permit requirements, EPA committed to conduct a second round of title V program reviews for all state and local programs that had at least 20 title V major sources within their jurisdiction by the end of FY 2010. The Florida Department of Environmental Protection (FDEP) initial program review was conducted week of March 29 through April 1, 2004, and is kept on file at the U.S. Environmental Protection Agency Region 4 (EPA) office in Atlanta, Ga.

The second program evaluation of the FDEP title V program was conducted on July 11-12, 2007, in Tallahassee, Florida. The enclosed evaluation report is organized into the five sections reviewed during the on-site visit: Resources and Internal Management; Public Participation; District and Local Offices Review; Permit File Review; and, Initial Program Evaluation Follow Up. An additional section, Program Improvements, identifies one area of significant concern.

Upon EPA's arrival in Tallahassee, Florida, EPA provided FDEP with a list of five title V sources with compliance assurance monitoring (CAM) plans that EPA planned to review as part of the program evaluation. In addition EPA conducted an entrance interview with key staff of the FDEP explaining the details that Region 4 would be addressing during their State office visit. The following parties attended the initial meeting: Randy Terry (EPA Region 4); Kathleen Forney (EPA Region 4); Gracy Danois (EPA Region 4); Brandi Jenkins (EPA Region 4); Trina Vielhauer (FDEP); and Jeff Koerner (FDEP).

A. Resources and Internal Management

FDEP's title V permitting is conducted by the Tallahassee office, 6 District offices and 6 of the 8 Local air quality program offices. The Central District office is in the process of training the Orange County local office to take responsibility for title V permitting in FY 2008. Each District and Local office implements title V permitting and related determinations for the sources within their authority with the exception of power plants, which are permitted in Tallahassee. FDEP's Tallahassee office is responsible for overall title V program management.

FDEP's current title V fee rate is \$25 per ton of pollutant, but rulemaking is proposed to increase the title V fee to \$30 per ton, effective FY 2008. Title V expenses are tracked using a cost accumulator system and title V fee revenue is tracked by the finance and accounting (F&A) department. F&A tracks and logs all fees received, which are then verified against the fee forms received by the Bureau of Air Regulation.

FDEP currently employs 30 permit writers throughout the State. This number includes the permit writers in the Tallahassee office, and the Local and District offices. These permit writers split their time between title V (60%) and non title V (40%) work including new source review (NSR) permitting as well as monitoring and enforcement activities. FDEP utilizes time sheets in order to accurately track the time allocated to title V activities.

Since the mid-1990's the title V staffing levels have been reduced from 18 permit writers in the Tallahassee office to 12. FDEP has had four permit writer vacancies during the past two years, three of which have been filled and interviews have been held for the fourth position with plans to fill that position as soon as possible. FDEP's general policy is to hire entry level permit writers. FDEP believes that part of the low turnover rate is due to the use of best management practices to retain their employees. FDEP utilizes flexible scheduling and has a salary structure that is designed to allow them to offer competitive salaries to retain employees.

FDEP provides many opportunities for staff to obtain training throughout the year. These training activities include courses provided by EPA, training provided at their annual air meeting, and FDEP's annual permit writers' workshop. Additionally, each permit engineer has a training plan that includes California Air Resources Board courses, online training, Air Pollution Training Institute courses and in-house training. New engineers work closely under the supervision of a licensed professional engineer. Statewide teleconferences are held each month regarding various topics, including permitting. FDEP is in the process of developing tools to include in a permitting desk reference book, which will be provided to each permit writer. Also, upon EPA promulgation of new rules, the Tallahassee office generally holds workshops or training sessions for all the State, District and Local staff. (e.g. New Source Review Reform). FDEP is also developing a training course on Statement of Basis which should be posted on their intranet website.

FDEP strongly believes that EPA can best assist them in their training efforts by continuing to send EPA staff to the District and Local offices to provide training. FDEP also requests that EPA develop additional tools and examples for streamlining the title V program. For example, FDEP would like to have a list of activities that would qualify for the 7-day notice without a

permit revision, 502(b)(10) or minor modifications. FDEP believes that tools on how to mesh CAM and post 1990 NSPS and NESHAP monitoring and recordkeeping requirements would be valuable for their streamlining efforts. FDEP also requests the simplification of incorporation of CAIR and CAMR into the title V permits.

FDEP utilizes weekly staff meetings to discuss issues and problems relating to permit issuance. Additionally, FDEP has a title V workgroup that is currently revisiting the title V formats and permit language. The group has had several meetings with the goal of resolving permit issues, developing suggestions for permit improvement and streamlining the title V permit. FDEP utilizes database reports and other reports to keep management abreast of permit issuance, in addition to staff meetings and briefings on key issues. The biggest internal roadblock to permit issuance has been finding a way to simplify the incorporation of complicated provisions, such as NESHAP or CAM, into the title V permit while ensuring that they are adequately addressed.

During the onsite portion of the Florida title V program evaluation, EPA conducted a thorough review of the FDEP budget. During the review, EPA found that Florida is making annual payments in the amount of 7.3 percent of their total title V revenue to the State General Fund. Since the title V program began collecting funds to implement the Florida title V program in 1993, over 9.4 million dollars have been transferred from the title V account to the Florida general revenue fund. There is no tracking of the title V revenues once transferred to the general revenue fund; therefore, it cannot be determined if any or all of these funds are used for costs associated with the title V program. The single year high for contribution amount was \$734,592.00 in 2001 and the single year low was \$638,417.00 in 1997. Florida's estimated contribution to the general fund in 2007 is \$619,635.00. EPA informed Florida that this appears to be a serious conflict with the requirements of 40 CFR Part 70, which explicitly requires that all title V revenue be spent to cover direct and indirect costs. In subsequent calls between FDEP and EPA, FDEP indicated that the 7.3 percent surcharge is required by Florida legislation for all State fees/revenue.

B. Public Participation

FDEP meets the title V requirements for public participation. FDEP utilizes the internet as a means for notifying the public of draft permits, but does not consider this method as an official method of notifying the public. The official method of public notice is for FDEP to draft the public notice and send it to the source. The source must have it published, at their expense, in the local paper of general circulation of the area. The source must then send FDEP a copy of the notice in the paper, along with proof of publication verifying that it has been published. In addition to these methods, FDEP maintains a mailing list for each project, which is used to notify persons interested in the title V permit. Anyone interested in being on this mailing list can submit either a verbal or written request to be included and FDEP does not charge a fee for inclusion. Persons on the mailing list will receive the complete permitting package, which includes the intent to issue with public notice and the draft, proposed, and final title V permits.

FDEP currently has no statutory requirements to reach out to any specific communities beyond the standard public notification process. FDEP is not required to publish notices in any language other than English, but in special circumstances, they have translated flyers regarding public

meetings into Spanish (e.g. public meetings on Florida Power and Light's PSD application for Glades Power Park).

C. District and Local Offices Review

A separate one-hour call was held with representatives of Florida's district and local offices. Twelve district and local offices participated in the call. EPA asked specifically that each representative explain how they are addressing any permits' backlog and whether or not available resources are sufficient to properly implement the program. The representatives established that there is currently no permit backlog to address; however, the permitting workload was increased by the number of significant modifications that were required due to the limited flexibility of the FL title V modifications rules. As for resources, the representatives expressed some concern regarding budget cuts that may prevent them from increasing staff levels in the future.

In general, the district and local representatives reported that the Tallahassee office provided excellent support and guidance regarding the implementation of the title V program.

D. Renewal Permits and File Review

Renewal Permits

Since the initial program evaluation, FDEP has continued to process title V permits in a timely manner and requires that all sources submit full renewal applications. To assist the expedition of the application process, FDEP has developed a process by which a facility can submit an electronic renewal application. Utilization, by the facilities, of the electronic renewal forms has reached 20 percent. Between July 2003 and July 2006, FDEP received 67 renewal applications for title V permits. Of those 67 permits, only six permits have yet to be issued. Three of those six applications are older than 18 months. FDEP is actively working to issue all permit renewals older than 18 months as expeditiously as practical. In addition, FDEP is in the process of removing all exempted area source MACTs from the title V permits and expects to have the process completed by the end of calendar year 2007.

CAM General Overview

FDEP has started the process to incorporate the requirements of Part 64 CAM through the title V renewals (see 40 CFR Part 64.5(a)(3) and (b)). Additionally, some of the title V permits incorporated CAM requirements during a significant modification of the permit (see 40 CFR Part 64.5(a)(2)). At the time of the program evaluation, FDEP has issued 93 title V permits with CAM requirements. FDEP utilizes a CAM template that allows the permit writers to have a streamlined document that incorporates the requirements to help reduce applicable requirement omissions. FDEP also has a user-friendly search option on their permits search page, <http://www.floridadep.org/air/eproducts/apds/default.asp>. The search option allows a user to search specifically for title V permits that include CAM requirements, which helps minimize the inquiry burden on FDEP staff. Upon the initial implementation of CAM, FDEP held a number of training sessions for staff and served as the lead for CAM development in permits. Since that time, FDEP has moved from being the lead for CAM issues to more of a technical resource for the District and Local programs.

Implementation of CAM

FDEP has maintained a thorough understanding of the requirements of 40 CFR Part 64. During the evaluation, four of the five requested permits were reviewed to determine if all the CAM requirements were incorporated. Based on the file review, FDEP has a good working knowledge of the topics and has implemented CAM according to EPA regulations. EPA recommends that FDEP continue to be mindful of the applicability and exemption criteria, found at 40 CFR part 64.2(a) and 64.2(b), respectively. It is important to ensure that facilities subject to CAM meet all the criteria for applicability and, if trying to qualify for an exemption, the facility must meet the exact requirement for the appropriate exemption.

E. Initial Program Evaluation Follow Up.

During the initial program evaluation, EPA found that Florida State rule 62.2132.410(2) restricted the use of off permit changes, which denies sources the operational flexibility intended by the statute and places it in conflict with federal rule 502(b)(1). EPA also clarified that Florida State rule 62.2132.410(2) must be amended to include this flexibility. As a rebuttal to EPA's finding, FDEP has requested specific examples of how their rule conflicts with 502(b)(10).

- EPA has provided these examples to FDEP and agreed to conduct a line-by-line comparison review to detail the specific differences between the federal rule and the Florida State rule. EPA expects to have this review completed by the end of the calendar year.

F. Program Improvements

Based on the findings of the 2007 program evaluation, this specific issue must be addressed.

- Florida's title V program is being charged a general revenue surcharge of 7.3 percent annually. This surcharge is being deposited into the Florida general treasury account to fund non specific state expenses. This surcharge appears to be in conflict with the federal requirements of 40 CFR Part 70.9(a) which states that "...any fee required by this section will be used solely for permit program costs." FDEP must either provide a detailed showing that these funds are, in fact, being used exclusively to support the title V program or an exemption of title V from this surcharge must be granted as expeditiously as possible.
 - Since the evaluation, FDEP has acknowledged that they are amenable to seeking authority to remove the general revenue surcharge from title V fees, but they are opposed to the repayment of any general revenue surcharge assessed while this requirement was considered part of their approved title V program. EPA and FDEP will continue discussions on how best to resolve this issue.

Conclusion

At the conclusion of the onsite portion of the Title V program review, EPA Region 4 personnel met with key FDEP officials to conduct an exit interview. During this exit interview EPA Region 4 shared the findings of the review and laid out a timeframe for when the final report would be completed. Personnel in attendance from EPA Region 4 were Randy Terry, Katy Forney, Gracy Danois, and Brandi Jenkins. Kay Prince and Gregg Worley participated by telephone. FDEP officials in attendance were Trina Vielhauer and Jeff Koerner.

With the exception of the significant fee issue noted above, EPA believes that FDEP is operating the title V program at a high level of proficiency and looks forward to working with the FDEP to address this area requiring correction. To expedite this effort, EPA has sent a letter from J. I. Palmer, Jr. to Michael W. Sole requesting that Florida address the identified fee issue.